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ations, and the constitutionality of legislation imposing such a restriction is open to serious doubt. VANCE, INSURANCE, § 34.

The United States Supreme Court has recognized that, for some purposes, the business of insurance is a proper object of police regulation by the states. Thus in *Eagle Ins. Co.* v. *Ohio*, 153 U. S. 446, this court held that a state may, in the exercise of its police power, compel an insurance company to make reports to the proper state officers of its business condition, liabilities, premiums, dividends and expenses, etc., without depriving the company of any of its constitutional rights. This decision, however, did not in terms treat the business of insurance as one affected with a public interest. It proceeded on the grounds that a corporation created by the state is subject to such reasonable regulations as the state may prescribe, as to the general conduct of its affairs, serving to secure the ends for which it was created, and not materially interfering with the privileges granted to it.

Two other states beside Nebraska have statutes similar to the one by this case declared unconstitutional. Laws of New Hampshire, 1899, c. 85; Laws of Kansas, 1909, c. 152. In view of the great importance of the question, it is inevitable that the United States Supreme Court will be called upon finally to decide as to the constitutionality of these statutes. Whether that court will extend the doctrine announced in *Eagle Insurance Company* v. *Ohio* and recognize the power of a state to regulate the rates which may be charged by insurers is problematical. A. J. A.

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INTEREST UPON LEGACIES WHICH ARE NOT PAYABLE UNTIL LEGATEE ATTAINS CERTAIN AGE.—Testator bequeathed to his son, who was thirteen years of age at the death of the testator, a pecuniary legacy to be paid him on his attaining twenty-five, and a further legacy on his attaining thirty, and also a share of the residue for life. The legatee petitioned for interest on the legacies from the death of the testator. *Held,* that the legacies do not carry interest even up to the time of attaining the age of twenty-one. *In re Abrahams; Abrahams* v. *Bendon* (1910), 80 L. J. Ch. 83.

The rule of law is well established that contingent legacies do not carry interest while in suspense. An equally well established exception to this rule is that contingent legacies to infant children, where the testator has provided no other fund for their maintenance, carry interest from the testator's death until the happening of the contingency. *Bowlby* v. *Bowlby* (1904), 73 L. J. Ch. 810. As thus stated the exception would extend to every case where the legatee is an infant, irrespective of the question whether the contingency is the attaining the age of twenty-one or the happening of any other event, and no statement of it has been found which is not substantially the same as that above. In WILLIAMS, EXECUTORS, Ed. 7, 745, it is thus stated: "Whether the legacy be vested or contingent, if the legatee be not an adult, interest on the legacy will be allowed, as a maintenance, from the time of the death of the testator, if there is no other provision for that purpose." *Lowndes* v. *Lowndes,* 15 Ves. 304, *Cary* v. *Askew,* 1 Cox 244,

*Crickett* v. *Dolby,* 3 Ves. Jr. 10, *Cox* v. *Corkendall,* 13 N. J. Eq. (2 Beasl.) 138, *Hepburn* v. *Hepburn,* 2 Bradf. Sur. (N. Y.) 74, *Allen* v. *Crosland,* 2 Rich. Eq. (S. C.) 68, *Sullivan* v. *Winthrop,* Fed. Cas. No. 13,600, (1 Sum. 1), *White* v. *Donnell,* 3 Md. Ch. 528, *Keating* v. *Bruns,* 3 Dem. Sur. (N. Y.) 233.

The court first eliminates from the case the contention that the gift of a share of the residue will prevent the operation of the above exception, since the decision in *Moody, In re; Woodroffe* v. *Moody* (1895), 64 L. J. Ch. 174, is binding on this court and is clearly to that effect. The court, however, expresses a personal opinion to the contrary.

The only remaining question, then, is: Does a legacy to an infant child, contingent upon his attaining the age of twenty-five, where no other provision is made for his maintenance, carry interest from the death of the testator? EVE, J., in answering this question says: "But this much I think is clear from the historical examination of the cases, that the exception had its origin in the desire of the Court to give effect to the presumed intention of the testator—that is to say, to provide for the maintenance of the infant —an intention which might well be presumed in cases where the suspensory period was limited to the years when the infant would in the ordinary course require to be maintained, but which could not be presumed so readily, if indeed at all, where the legacy was made contingent upon events having no reference to the infancy of the legatee; and in this connection it is certainly remarkable that in all the cases brought to my attention the contingencies have been the attainment by the child of full age, or marriage under that age. There is no case in which the exception has been held to apply when the contingency is other than the attainment of full age, or marriage under that age. In that state of things, and bearing in mind that I am dealing with an exception grafted on the general rule, ought I to be the first judge to hold that the exception extends so as to include contingencies of every description and having no relation to the attainment of full age? I do not think I ought. I think I ought to treat the exception as limited to those cases in which the contingency is the attaining of full age, or previous marriage, and to hold that where the testator has made a legacy payable upon a contingency which has no reference whatever to the attainment of full age the case ought to be treated as governed by the general rule, and not as coming within the exception. Accordingly I hold that neither of the legacies carries interest, and I think that must apply to the whole of the interest. * * * In my opinion, the testator must be taken to have so framed the bequest as to keep the legacies outside the exception and I think I would be creating confusion were I to treat the bequest as partly within and partly without the exception."

The case raises a question which seems never to have been raised in any previous case reported in either England or America—must the contingency upon which the legacy is given bear some relation or have some reference to the infancy of the legatee in order that the exception shall operate? No such condition is required by any statement of the exception in any previous

case found, though such relation or reference does in fact exist in nearly all of them. Moreover, the case is clearly within the reason which gave rise to the exception—the necessity of maintenance for the legatee while the legacy is in suspense—and so long as within the reason, it can scarcely be said to be an extension of it.

The tendency of some of the courts is to greatly extend the exception—the Supreme Court of New York, in *Thorn* v. *Garner*, 42 Hun 507, allowed interest from the date of testator's death on a legacy to an adult son who had always been supported by testator, was in feeble health and wholly dependent on testator. The decision was, however, reversed on appeal, as an unwarranted extension of the exception. Same title, 113 N. Y. 198, 21 N. E. 149.

In *Lyon* v. *Industrial School Ass'n.*, 127 N. Y. 402, a legacy was given to an adopted child to be paid on the legatee's attaining twenty-five. Interest was denied on the ground that there was no moral obligation on the testatrix to support the legatee, since the husband of testatrix was living, was an uncle of the legatee and a man of wealth. No question was raised as to the inapplicability of the exception because of the lack of relation between the contingency and the infancy of the legatee.

In *Descrampes* v. *Tomkins* (1784), 4 Bro. C. C., note 149, legacies were given to five maternal grandchildren of testator to be paid them at their respective ages of twenty-three years and in case of death before that age, the legacies were to sink into the residue. Here again, interest was denied on another ground, but no question was raised regarding the age at which the contingency was to happen. The court, however, seems to regard the case as in the same class as cases in which the contingency is the attaining twenty-one, since it is there said: "The case of *Nicholls* v. *Osborn* (1727), 2 P. Wms. 419, is the only case applicable to this," and in that case the legacy was payable at twenty-one.

So in *Churchill* v. *Lady Speake* (1694); 1 Vern. 251, a legacy was given to testator's granddaughter to be paid over when and as his executrix "should think fit and best for his said granddaughter." The legatee was nine years old at the death of the testator. The executrix died twenty years after testator without having paid the legacy. The court allowed interest from the death of testator, though the contingency need not have happened on attaining majority, nor did it happen before that time, nor did it have any relation to the infancy of the legatee.

It seems, therefore, since the precise point had never before been raised, and the exception had invariably been stated generally, and such a limitation upon it never before suggested, and the reason for the exception applied in the principal case, that the Court might better have put the question in another form: Ought I to be the first judge to limit the application of the exception to contingencies having relation to the attainment of full age?

Perhaps the opinion of the Court as to the effect which the gift of a share of the residue should have had in removing the case from the operation of the exception slightly influenced the decision. A. McK. B.